

REMARKS

Applicants respectfully request reconsideration of the present application in view of the above amendments and in view of the reasons that follow.

I. Claim Rejections under 35 U.S.C. § 102

On page 3-4 of the Office Action, Claims 18-22 and 28 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,854,593 (Dykema).

With respect to independent Claim 18, the Examiner stated:

Dykema et al. teaches initiating a training sequence (col. 4 lines 27-32);

identifying and storing a control code of the RF control signal (col. 6 lines 14-20, col. 17 lines 15-20);

identifying the data characteristic of the RF control signal (col. 18 lines 15-20) and identifying a frequency based on a data characteristic if the number of rising edges appearing in the received signal over a period of a predetermined time interval (col. 17 lines 1-14).

In the Examiner's "Response to Arguments" on Page 2 of the Office Action, the Examiner further explains his position:

It is the Examiner's position that the reference of Dykema et al. teaches identifying a device type as a GENIE device type based on the number of rising edges detected in 850 μ s time period (col. 20, lines 49-56). Dykema et al. also teaches the frequency of the RF control signal is based on the type of device identified and there is a frequency associated with the identified device type (col. 20, lines 55-64).

Applicants respectfully traverse the rejection.

Claim 18 recites, "a method for training a transceiver" comprising, among other elements and limitations, "determining at least one RF frequency associated with the RF control signal based on the determined device type." The examiner essentially argues that Dykema's mention

of a frequency-to-device association is the same as “**determining at least one RF frequency associated with the RF control signal** based on the determined device type.”

Applicants respectfully submit that this interpretation of Dykema by the Examiner is incorrect and is respectfully traversed by the Applicants.

For a reference to anticipate a claim, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants respectfully submit that Dykema does not disclose the determination of an RF frequency of an RF control signal based on a determined device type in a process for training a transceiver. The Examiner seems to acknowledge this deficiency of Dykema relative to Claim 18: rather than explaining how Dykema expressly describes “determining at least one RF frequency associated with the RF control signal based on the determined device type,” the Examiner’s position attempts to explain how Dykema anticipates the claim despite the lack of an express teaching. Unless the Examiner’s position is that Dykema *inherently* describes the claimed invention, the Examiner’s anticipation rejection based on less than an express disclosure is *prima facie* invalid. See MPEP § 2131 (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

In order to rely upon a theory of inherency, “the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” MPEP § 2112, quoting *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). Here, the Examiner has not provided a basis or technical reasoning to support an anticipation rejection based on inherency. Further, the step of “determining at least one RF frequency associated with the RF control signal based on the determined device type” does not necessarily flow from the

teachings of Dykema. Indeed, nearly the entirety of cols. 19 and 20 of Dykema are directed to the use of a voltage-controlled oscillator (VCO) to scan or sweep Dykema's RF circuit to find a frequency. In other words, the frequency of the control signal in Dykema is found via the scanning - not based on the step of "determining at least one RF frequency associated with the RF control signal based on the determined device type." Further, Applicants respectfully submit that Dykema's approach for finding the frequency of the control signal (via the scanning) is strong evidence that the step of "determining at least one RF frequency associated with the RF control signal based on the determined device type" does **not** necessarily flow from the mere disclosure that GENIE data is typically transmitted between 290 and 320MHz.

Because Dykema neither expressly nor inherently describes the "method for training a transceiver" of Claim 18, including, among other elements, "determining at least one RF frequency associated with the RF control signal based on the determined device type," the Examiner's rejection of Claim 18 under Dykema is improper. Applicants respectfully submit that Claim 18 is patentable over Dykema. Dependent Claims 19-22 and 28, which depend from independent Claim 18, are also patentable. See 35 U.S.C. § 112 ¶ 4. The Applicants respectfully request withdrawal of the rejection of Claim 18 under 35 U.S.C. § 102(b).

II. Claim Rejections – 35 U.S.C. § 103

On page 5 of the Office Action the Examiner rejected claims 1-6, 8-12, 16-17, and 29 as being obvious over Dykema in view of U.S. Pat. No. 6,078,271 to Roddy et al. ("Roddy") under 35 U.S.C. § 103(a). The Examiner stated:

Regarding claim 1, 8, 10, Dykema et al. teaches a trainable transceiver comprising: ... identifying the RF frequency associated with the control signal based on the determined device type (col. 20 lines 55-67).

The Examiner acknowledged that:

Dykema et al. is silent on teaching the receiver is a wideband receiver.

However, the Examiner stated:

Roddy et al. in an analogous art teaches a wideband receiver (30) coupled to the antenna for receiving a control signal from a remote transmitter (col. 2 lines 41-50).

The Examiner concluded that:

It would have been obvious to one of ordinary skill in the art to modify the system of Dykema et al. to include a wideband receiver as disclosed by Roddy et al. because this allow the transceiver to learn control codes that utilizes a wide range of frequencies and allows the single transceiver to control multiple devices of different manufacturer.

Applicants respectfully traverse the rejections.

A. The Combination of Dykema and Roddy Does Not Disclose, Teach, or Suggest Each and Every Element of the Claimed Invention

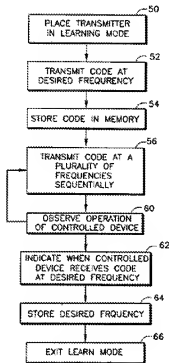
Each of independent Claims 1, 10, and 29 include a control circuit or method configured to select or determine an RF frequency associated with a received RF control signal based on a determined device type. Particularly, Claim 1 recites a trainable transceiver including, among other elements, a control circuit configured “to determine at least one RF frequency associated with the RF control signal based on the determined device type.” Claim 10 also recites a trainable transceiver including, among other elements, a control circuit configured “to determine at least one RF frequency associated with the RF control signal based on the determined device type.” Claim 29 recites a method for training a transceiver including, among other steps, “selecting at least one RF frequency from a pre-stored list of frequencies based on the determined manufacturer.”

For at least the reasons explained above with respect to independent Claim 18, Applicants respectfully submit that Dykema does not disclose selecting or determining an RF frequency associated with a received RF control signal based on a determined device type.

Roddy does not cure Dykema’s deficiency. Indeed, Roddy does not attempt to identify a particular frequency of the received RF control signal using a determined device type. See Roddy at col. 3, lines 30-35 (“transmitter 20 received the code with receiver 30.... At this time,

the programmable transmitter 20 'knows the code' to be associated with the specific user switch 22, **but not the desired frequency**" (emphasis added). Rather than attempting to determine the manufacturer, or the frequency based on the manufacturer, Roddy teaches transmitting a code at a plurality of frequencies sequentially and waiting for the user to indicate that the garage door has been activated prior to storing a frequency (see Roddy at FIG. 2 (reproduced below) - particularly steps 56-66 and accompanying description).

FIG.2



Because neither Dykema nor Roddy disclose, teach, or suggest "a control circuit configured ... to determine at least one RF frequency associated with the RF control signal based on the determined device type" (as recited in Claim 1), the combination of Dykema and Roddy does not disclose, teach, or suggest the claimed invention. Accordingly, Applicants respectfully submit that the Examiner's rejection of Claims 1-6, 8-12, 16-17, and 29 under Dykema in view of Roddy is improper. Applicants respectfully submit that Claims 1-6, 8-12, 16-17, and 29 are patentable over Dykema and Roddy.

B. Dykema and Roddy Teach Away from the Claimed Invention and Teach Away from a Combination with Each Other

The present invention determines an RF frequency associated with a received RF control signal based on a determined device type.

Both Dykema and Roddy disclose approaches that teach away from the solution of the present invention. In Dykema, RF circuitry is scanned through a range of frequencies to find a carrier frequency of the received RF control signal. In Roddy, the system uses a trial and error algorithm where a user is told to indicate when a target device (e.g., a garage door) activates in response to the transmission of many sequential frequencies.

First, Applicants respectfully submit that a modification of Dykema toward the present invention would change the principal of Dykema's operation. Particularly, Applicants respectfully submit that modifying Dykema to include a wideband receiver and to make a frequency determination based on device type would move away from Dykema's scanning-to-determine frequency principal of operation.

Second, Applicants respectfully submit that Roddy teaches away from the circuitry of the current invention and from a combination with Dykema. Roddy explains that a system which attempts to learn control signal frequency and control data during programming "requires very sophisticated electronics for finding and then reproducing the frequency of the learned signal" and that "the circuitry and operating methods currently used in universal RF transmitters are quite complex" (Roddy at col. 1, lines 22-28). Roddy teaches replacing the complexity it criticizes for its user observation and feedback system. Applicants respectfully submit that Dykema is the type of universal RF transmitter that Roddy discredits and that Roddy teaches away from a combination with Dykema.

For at least these reasons, Applicants respectfully submit that the combination of Dykema and Roddy is improper and that Claims 1-6, 8-12, 16-17, and 29 are patentable over Dykema and Roddy.

On page 7 of the Office Action the Examiner rejected claims 7 and 15 as being obvious over Dykema in view of Roddy and further in view of U.S. Pat. No. 6,556,813 to Tsui ("Tsui") under 35 U.S.C. § 103(a).

Dependent Claims 7 and 15, which depend from independent Claims 1 and 10, are also patentable over Dykema and Roddy for at least the same reasons as explained above with respect to Claims 1 and 10. Tsui does not cure the deficiencies noted above with respect to Dykema and Roddy. Thus, Claims 7 and 15 are also patentable.

On page 8 of the Office Action the Examiner rejected claim 23 as being obvious over Dykema in view of Tsui under 35 U.S.C. § 103(a).

Dependent Claim 23 depends from independent Claim 18 and is patentable over Dykema for at least the same reasons as explained above with respect to Claim 18. Tsui does not cure the deficiencies noted above with respect to Dykema.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date October 21, 2009

By / Karl F. Reichenberger /

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 319-7347
Facsimile: (414) 297-4900

Karl F. Reichenberger
Attorney for Applicant
Registration No. 60,726